

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DEMETRIS MCNUTT

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:09cv205HSO-JMR

**KEN BROADUS, MIKE NUTEFALL,
MIKE BYRD, and CINDY STEWART**

DEFENDANTS

**MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND
RECOMMENDATION, GRANTING MOTION FOR SUMMARY JUDGMENT,
AND DISMISSING ACTION WITH PREJUDICE**

This matter is before the Court on the Report and Recommendation [39] of Chief Magistrate Judge John M. Roper, entered in this cause on December 2, 2010. Judge Roper recommended that Defendants' Motion for Summary Judgment [37] be granted, and that Plaintiff's official and individual capacity claims against Defendants should be dismissed with prejudice. Report and Recommendation, at p. 26. A copy of the Report and Recommendation was mailed to Plaintiff at his last known address by certified mail, return receipt requested, on December 2, 2010. December 2, 2010, Docket Entry. The Report and Recommendation was received by Plaintiff on December 9, 2010. Acknowledgment of Receipt [40]. Plaintiff has not filed any objection to the Magistrate Judge's Report and Recommendation to date.

The Court finds that the Magistrate Judge properly recommended summary judgment in favor of Defendants, and that Plaintiff's claims be dismissed. After considering the evidence of record, the Magistrate Judge concluded that Plaintiff failed to create a genuine issue as to whether Defendants violated his constitutional rights during his incarceration as a pretrial detainee at the Jackson County Adult

Detention Center. To the extent Plaintiff's Complaint could be construed to allege claims under state law, the Magistrate Judge found that those claims were barred by Mississippi Tort Claims Act, MISS. CODE ANN. § 11-46-1, *et seq.*, on grounds that he was an inmate at the time the alleged events occurred. After referral of hearing by this Court, no objections having been filed as to the Report and Recommendation, and the Court, having fully reviewed the same as well as the record and relevant law in this matter, and being duly advised in the premises, finds that the Report and Recommendation should be adopted in its entirety as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [39] of Chief Magistrate Judge John M. Roper, entered on December 2, 2010, should be, and hereby is, adopted in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion for Summary Judgment [37] filed by Defendants Mike Byrd, Ken Broadus, Mike Nutefall, and Cindy Stewart should be and hereby is **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this action is hereby **DISMISSED WITH PREJUDICE**. A separate judgment will be entered herein in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 23rd day of March, 2011.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE